



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,234	01/29/2001	Paul G. Loubser	2001-01442	9679

7590 04/24/2002

Al Harrison
Harrison & Egbert
1018 Preston #100
Houston, TX 77002

EXAMINER

PATEL, MITAL B

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 04/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/772,234

Applicant(s)

LOUBSER, PAUL G. *ch*

Examiner

Mital B. Patel

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 29 January 2001 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 8, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Osborne (US 412409).

3. **As to claim 1**, Osborne teaches a supraglottic and peri-laryngeal apparatus for insertion of a supraglottic airway by a medical practitioner into the patient's upper airway, the apparatus comprising a handle member **a**; an arcuate offset member disposed medially of the handle member and a compressor-lever shield **b**; the compressor-lever shield member configured to continuously widen from the arcuate offset member to a substantially broad tip means disposed at the shield member's leading, distal edge, and adapted to match size and configuration of the anatomical feature's of the patient's upper airway; and the arcuate offset member configured to enable the shield member to reach the supraglottic region proximal to the base of the tongue and the vallecular so as to provide sufficient leverage to enable the medical practitioner to compress and lift the tongue and to simultaneously lift the epiglottis in the pharyngeal cavity, while simultaneously flattening the tongue in the buccal cavity, for creating sufficient space both in the buccal cavity and the pharyngeal cavity to enable

the medical practitioner to rapidly insert the supraglottic airway while minimizing tissue trauma and post-procedural patient discomfort.

4. **As to claim 2**, Osborne teaches an apparatus wherein the handle member, the arcuate offset member, and the compressor-lever shield member are integrally constructed.

5. **As to claim 8**, Osborne teaches an apparatus wherein the compression-lever shield member comprises a substantially flat configuration.

6. **As to claim 9**, Osborne teaches an apparatus wherein the compression-lever shield member comprises a concave configuration.

7. **As to claim 10**, Osborne teaches an apparatus wherein the compression-lever shield member comprises a perimeter buffered edge to prevent tissue trauma as the shield member is advanced by the medical practitioner through the patient's pharyngeal cavity into the vallecular.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3-7, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osborne.

10. **As to claims 3-7**, Osborne teaches essentially all of the limitations except for the how the handle member and arcuate offset member are interconnected and how the arcuate offset member and the compression-lever shield member are connected and what specifically are the means of connection. However, it would be obvious to one of ordinary skill in the art to modify the apparatus of Osborne so that the various components of the apparatus are interconnected to each other so that they can be detachable for the purposes of replacing parts or for the purposes of ease of cleaning. Furthermore, the means of connection would also be well within the scope of one of ordinary skill in the art of connectors.

11. **As to claim 11**, Osborne teaches essentially all of the limitations except for wherein the arcuate offset member includes a marker means disposed at its end proximal to the handle member for guiding the medical practitioner when the shield member has been fully inserted into the patient's upper airway. However, it is known in the art to provide a marker means disposed at an end proximal to the handle member for guiding the medical practitioner (See US 6053166).

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5743254, US 5656014, US 5498231, US 5003963, US 4996976, US 4982729, US 4697578, US 4565187, US 3154069, US 104,874.

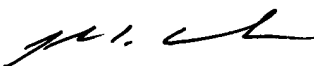
Art Unit: 3761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 703-306-5444. The examiner can normally be reached on Monday-Friday (8:00 - 4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4520 for regular communications and 703-306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

mbp
April 21, 2002


John G. Weiss
Supervisory Patent Examiner
Art Unit 3761

**Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01**

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in ABANDONMENT of the application.